widely accepted; and it is held not to conflict with the general principle made binding on our Federal Courts by the Constitution, that no man shall be twice put in jeopardy for the same offence. The contention is that the prisoner cannot be said to have ever been in jeopardy during his trial on an imperfect indictment, because there is always a presumption that the court will set aside the proceedings before judgment. Such a presumption, however, is not founded in fact; for the courts do not of their own motion scrutinize every indictment on which there has been a verdict of guilty, and refuse judgment for any formal defect. If the accused is to take advantage of these flaws, his counsel must point them out. As a matter of fact, very many prisoners have suffered punishment after conviction on indictments in which sufficiently acute counsel might have made the court recognize more than one technical flaw. The usual rule permits the prosecutor to put the accused so far in jeopardy that, if the jury goes against him, he is practically certain to be punished, unless he has exceptionally sharp-witted counsel, and then, after the jury has acquitted him on the merits, to come forward, and, by taking advantage of a flaw in the indictment that he has himself framed, subject the accused to a second trial. In this country, at any rate, a verdict of acquittal on a perfect indictment is held to be in itself a bar to subsequent prosecutions. If then the jeopardy of the prisoner is in fact equally great in most cases where the indictment is insufficient, the verdict ought to be equally a bar to another trial. And certainly it will encourage the careful conduct of the government's case, and lessen needless harassing of prisoners, if prosecutors are prevented from taking advantage of their own mistakes to begin proceedings all over again.

WHERE CAN INTANGIBLE PROPERTY BE TAXED? — There is much confusion in the authorities as to the extent of legislative power to tax intangible property where the State has not jurisdiction of the owner. This may be attributed in part to a frequent misuse of the fiction, *Mobilia personam sequuntur, immobilia situm.* Because of the number of States now taxing inheritances, three recent decisions of the New York Court of Appeals are important. It was held, that the legislature has power to impose such a tax on the stock of a domestic corporation owned by a non-resident decedent and bequeathed to a non-resident, the certificates being kept out of the State, but not on bonds of a domestic corporation similarly owned, etc. (*In re Bronson*, 44 N. E. Rep. 707); that the bonds of a foreign corporation owned and bequeathed in like manner can be similarly taxed when they are actually deposited within the State (*In re Whiting's Estate*, Ibid. 715); and that a non-resident decedent's deposit in a New York trust company is also subject to such taxation. (*In re Houdayer's Estate*, Ibid. 718.)

These cases are of general interest, more because of the instructive opinions delivered by Gray and Vann, JJ., than for the actual results under the New York statute. In their opinions in each of the cases these judges, who concur only in holding the stock in the *Bronson* case taxable, approach the subject from entirely different points of view. The position maintained by Gray, J., that intangible property "can have no locality separate" from its owner, is vigorously assailed by Vann, J.

The fiction *Mobilia personam sequuntur* is really an expression of a rule of law as to the administration of deceased person's estates. Story,

Confl. Laws, 6th ed., § 379. It has not been allowed to prevent the taxation of tangible property physically within the jurisdiction. *Hoyt* v. *Commissioners of Taxes*, 23 N. Y. 224, 228. The trouble is, as Vann, J. says (p. 711), that intangible property has ever been perplexing "because it has no physical presence. . . . It may exist, as it were, in the air. . . . Such rights are ordinarily regarded as attached to the person of the owner, but they are not inseparable from him, because creditors are permitted to seize them. . . . There is nothing, therefore, in the nature of the most intangible right . . . to prevent the legislature from giving it a *situs* apart from the residence of its owner," provided it has "some practical existence in the State that assumes jurisdiction." This seems the sound view. The analogy of jurisdiction in garnishment proceedings appears to be perfect. The answer (see the *Houdayer* case, 38 N. Y. Supp. 323, 325), that jurisdiction over the debtor is not jurisdiction over the debt, because the tax law creates the obligation which is enforced, while in attachment of a debt only an existing obligation is enforced, is not satisfactory, whether or not garnishment is viewed as a proceeding *in rem.*

On principle, there appears to be no real distinction between the power to tax the bonds in the *Bronson* case and the power to tax interest which a domestic corporation pays to its foreign bondholders. The Supreme Court was divided five to four in holding that Pennsylvania could not impose such a tax as impairing the obligation of contracts. *State Tax on Foreign-held Bonds*, 15 Wall. 300. Mr. Justice Vann's distinction between a tax on the right of succession and a tax on property does not seem to meet the question squarely, where the power to tax the right of succession depends upon jurisdiction over the thing inherited.

The *Whiting* case, *supra*, rests upon a different principle. In the *Foreign-held Bond* case (p. 324) it was said that state and municipal bonds, by usage, and a bank's circulating notes, because treated as money, are so far tangible property that they may be taxed where found. See Dos Passos, Inh. Tax, 2d ed., 65. With this principle once established, that the documentary evidence of intangible property may be treated as tangible property, it becomes a question of fact whether usage has gone far enough to justify its application. There may easily be a difference of opinion in a given case, and yet one would hardly say a decision either way was wrong. When this characteristic has become attached to any kind of intangible property, it is a question whether it can consistently be held that the character of intangible property remains so that the property can be reached through the debtor.

RECENT CASES.

BILLS AND NOTES — CERTIFICATION OF NOTE BY BANK — PAYMENT. — Defendant, holder of a note payable at the plaintiff bank, caused it to be presented for certification. A few days after certifying the note, plaintiff discovered that it did not possess funds of the maker sufficient to pay it, and requested that the note be withheld from the clearing house. The note was not withheld, however, and the clearing-house bank of the plaintiff was obliged by the rules of the clearing house to pay it, as an item against a bank for which it cleared. *Held*, that plaintiff could not recover the amount